

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**W. (No. 2)**  
**v.**  
**Eurocontrol**

**139th Session**

**Judgment No. 4960**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms A. W. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 19 February 2020, Eurocontrol's reply of 18 June 2020, the complainant's rejoinder of 2 September 2020, Eurocontrol's surrejoinder of 17 December 2020, the complainant's further submissions of 16 September 2024 and Eurocontrol's final observations of 24 September 2024;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges, firstly, the decision not to promote her in the 2018 annual promotion exercise and, secondly, the refusal to consider a reclassification of her post. She also alleges gender discrimination.

The complainant joined the Eurocontrol Agency, the Organisation's secretariat, at its Headquarters in Brussels (Belgium) on 1 June 2003, at grade A7, renamed AD8 as from 1 July 2010. She was promoted to grade AD9 on 1 July 2011. On 1 July 2014 she was appointed Head of Agreements and Economic Affairs, at grade AD10, in the AD5-AD12

grade bracket. In July 2016 her post was renamed “Administrator” in the AD5-AD12 grade bracket, while her grade remained AD10. From 20 April 2018 the complainant is assigned to the Directorate Central Route Charges Office, Finance and central IT (Directorate CFI), in the Finance and Procurement Unit (CFI/AFS/FPR Unit) within Finance Services (CFI/AFS). That unit was renamed the Procurement and Agreements Unit (CFI/AFS/PAR Unit) from 4 July 2019. In her service he led a team of eight to ten persons.

By a memorandum of 30 April 2018, the complainant requested the Director of Directorate CFI to create an Agreements and Economic Affairs Unit as part of the planned reorganisation of her service and to appoint her head of this new unit, but still at grade AD10. She argued that grade AD10 also belonged to the AD9-AD13 grade bracket which covered Head of Unit posts, that her duties had evolved over the years and that this measure simply constituted recognition of the work she was doing. It does not appear from the evidence in the file that she received a direct reply to this request. However, following the publication of Decision No. XX/1(2018) of the Director General of 20 April 2018 – which he signed on 30 May 2018 – the complainant, having noticed that a new unit had after all been set up within the Directorate CFI, requested the Director General that she be transferred to become its head. She was informed by the Head of Human Resources and Services (Ms D.) that this new post could only be assigned to a candidate who was already a Head of Unit, which she was not. She was also asked in future to refrain from approaching the Director General directly whenever she was considering a career move but to contact Ms G., the “business partner HR” (Human Resources) for her directorate.

On 3 October 2018 the complainant asked the Human Resources Directorate (HRD) whether the Organisational Development Committee (“OD Committee”) was reviewing her job, pointing out that a reorganisation of her entire service was underway. On 23 October 2018 she was told that a request of this type could not be submitted directly by the job holder but only via the hierarchical line and with the final approval of the Director of the division concerned. She was also

informed that the ongoing reorganisation of the service was intended to determine the appropriate level of resources in terms of efficiency but did not include a review of the complainant's job level as such and that it did not seem appropriate to request such a review in view of the Organisation's financial situation. The same day, the Director of Directorate CFI, Mr H., explicitly expressed his support for HRD's view. On 17 December 2018 Ms G. reported to the complainant and the latter's Head of Unit – and therefore supervisor –, Mr St., on the needs identified in the CFI/AFS/FPR Unit. It emerged from that meeting that there were no plans to revise the level of responsibility of existing posts, including the complainant's, which were considered appropriate by senior management.

Meanwhile, the Director General had also initiated the annual promotion exercise for that year on 31 July 2018. A guideline and a list of eligible staff members, which included the complainant for the Directorate CFI, were published. The complainant's immediate supervisor did in fact propose her for promotion in the 2018 exercise, but, in the following stage, the Director of Directorate CFI, in view of the budget allocated to his Directorate for proposing candidates for promotion to a higher post as well as preliminary consultations held, firstly, with Staff Committee representatives and, secondly, with the Directors of other Directorates, decided not to include the complainant's name on the list of staff members eligible for promotion to be submitted to the Promotion Board. On 23 November 2018 the Board unanimously adopted the final list of staff members that it recommended for promotion. On 10 December 2018, by Office Notice No. 13/18, the Director General adopted the list of staff members promoted, which did not include the complainant. Only one member of the Directorate CFI, namely her colleague Mr V., was promoted in the 2018 exercise.

On 22 January 2019 the complainant lodged an internal complaint against both the decision of 10 December 2018 not to grant her a promotion and the decision of 23 October 2018 refusing to submit her post for a review by the OD Committee, and also requesting that she be promoted to grade AD11, to the post of "Head of Unit or equivalent". She regretted that she had not been given any reasons for the decisions,

alleged several breaches in the promotion procedure followed by the Promotion Board and the Director General, and also stated that she had suffered from gender discrimination in terms of career progression in relation to her male colleagues. On 8 April 2019 the Head of Human Resources and Services informed the complainant that the Joint Committee for Disputes would examine her internal complaint at its next meeting. On 11 September 2019 the Joint Committee for Disputes issued its opinion, without really expressing a clear common position. The majority of its members took the view that the complainant's request for a review of her job was well-founded in view of the weakness of the reasons provided by the complainant's director for refusing that request and given her previous director's agreement to the contrary. However, all members considered that the promotion procedure had been followed correctly but that the complainant should have received a copy of her promotion proposal form. Lastly, the Committee's members considered that there was insufficient evidence to establish gender discrimination, but two members took the view that an investigation should be conducted in this respect.

On 28 November 2019 the Director General dismissed the complainant's internal complaint. That is the impugned decision.

In this complaint, the complainant asks the Tribunal to set aside the decision of 28 November 2019, to order a re-examination of her merits with a view to a promotion as well as a re-evaluation of her job, to declare that she has suffered from gender discrimination, and to order the Organisation to take all measures to put an end to it. In any event, she requests that an investigation be opened to establish the existence of such discrimination. She also asks that the Organisation be ordered to pay her the sum of 150,000 euros for the material injury she considers she has suffered as a result of repeated losses of opportunity for promotion and career advancement in the Directorate CFI, compensation of 150,000 euros for the moral injury allegedly suffered, 6,000 euros for the delay in handling her internal complaint, and 8,000 euros in costs for the present proceedings.

Eurocontrol asks the Tribunal to dismiss the complaint as unfounded and, accordingly, to reject the complainant's claims in their entirety.

### CONSIDERATIONS

1. The complainant asks the Tribunal to set aside the Director General's decision of 28 November 2019 rejecting her internal complaint, to order a re-examination of her merits with a view to a promotion as well as a re-evaluation of her job, to declare that she has suffered from gender discrimination and to order the Organisation to take every measure to put an end to it, and, in any event, to initiate an investigation in order to establish its existence.

2. Among the complainant's various pleas, there is one, concerning the lawfulness of the procedure followed in examining her internal appeal, which, if recognised as well-founded, should be considered decisive.

According to the complainant, there was a breach of the adversarial principle and the principle of equality of arms in that, when examining her internal complaint, the Joint Committee for Disputes received "communication of documents and evidence"\* the existence of which she herself was unaware. By providing these items of evidence and documents to the Committee, Eurocontrol was able to make its case without the complainant being able to respond.

3. The Tribunal recalls in this regard that, under its settled case law on the adversarial principle, the principle of equality of arms and the right to due process, a staff member must, as a general rule, have access to all the evidence on which the competent authority bases its decision concerning her or him (see, for example, Judgment 4739, consideration 10, and the case law cited, as well as Judgments 4217, consideration 4, 4023, consideration 5, 3995, consideration 5, 3295,

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\* Registry's translation.

consideration 13, 3214, consideration 24, 2700, consideration 6, or 2229, consideration 3(b)). This applies equally to the disclosure of such documents in internal appeal proceedings (see, in particular, Judgments 4739, consideration 12, and 3995, consideration 5).

4. In the present case, in respect of her request for a reclassification of her post, the complainant correctly points out that it is apparent from the opinion of the Joint Committee for Disputes that the members of the Committee had access to documents concerning a previous review of her post, to which she states she did not have access until the Committee delivered its opinion.

Similarly, with regard to the refusal to promote her, the complainant submits, without being effectively contradicted by the Organisation, that she realised that the Agency had sent a file to the Joint Committee for Disputes during the internal appeal procedure only when she read the Committee's opinion. This is notably the case of Annex 12 to the reply, which reproduces a document prepared on 16 April 2019 in response to a request from the Committee, containing a list of women promoted in the Agency between 2014 and 2018.

The failure to disclose these documents to the complainant in advance is all the more unacceptable as her counsel, by a letter of 12 June 2019 sent to the then Director General and the Head of Human Resources and Services, had explicitly requested the disclosure of "any evidence, other than the internal complaint and [the] annexes thereto, that the Agency intend[ed] to produce before the [Committee], [...] in a timeframe compatible with the [complainant]'s possible right of reply in order to ensure an impartial and objective opinion observing the adversarial principle and so that the [complainant] [could] have access to all the evidence on which the Agency [was] preparing to base its decision concerning her"\*.

It follows that the Director General's final decision of 28 November 2019 dismissing the complainant's internal complaint of 22 January 2019 is tainted with a fundamental flaw that constitutes a

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\* Registry's translation.

breach of both the adversarial principle and the principle of equality of arms. The complainant was denied due process in the consideration of her internal appeal. The final decision of 28 November 2019 must therefore be set aside, without there being any need to examine the complainant's other pleas against it.

5. Accordingly, it would be appropriate to remit the case to Eurocontrol for the consideration of the internal complaint to be recommenced at the stage where the flaw identified above occurred.

However, in view of the considerable time that has already elapsed and the fact that the post held by the complainant has since been abolished, the Tribunal does not consider such a remittal appropriate. It will therefore itself rule on the lawfulness of the decisions of 23 October and 10 December 2018. As the complainant has nevertheless suffered an injury on account of the breach of her right of appeal, this injury will be taken into account in the amount of moral damages awarded to her in consideration 29 below.

*On the decision of 10 December 2018 to refuse to promote the complainant during the 2018 annual promotion exercise*

6. In support of her first plea specifically directed against the refusal to promote her to a higher grade during the 2018 promotion exercise, the complainant submits that the procedure followed was tainted by various flaws. Firstly, the decision of 10 December 2018 did not provide her with any explanation or reasons as to why she had been excluded from the promotion procedure. Secondly, none of the documents for discussion in which she was mentioned were communicated to her at the appropriate time, which, in her view, casts doubt on the objectivity and completeness of the examination carried out initially by the Promotion Board and then by the Director General in his decision of 10 December 2018.

7. The Tribunal recalls, however, that consistent case law states that staff members do not have an automatic right to promotion (see Judgments 4391, consideration 4, 4290, consideration 8, 4066,

consideration 3, 3495, consideration 11, and 1016, consideration 3), as an organisation has a wide discretion in deciding whether to promote a staff member. For this reason, such decisions are subject to only limited review by the Tribunal, which will only interfere if the decision was taken without authority; if it was based on an error of law or fact, some material fact was overlooked, or a plainly wrong conclusion was drawn from the facts; if it was taken in breach of a rule of form or of procedure; or if there was an abuse of authority (see Judgments 4480, consideration 13, 4391, consideration 4, 4290, consideration 8, 4281, consideration 2, 4252, consideration 4, 4066, consideration 3, and 2835, consideration 5). Furthermore, the Tribunal has held that, since the assessment of a candidate for promotion involves a value judgement, it is not its role to interfere in this decision-making process unless it is seriously flawed (see Judgments 4895, consideration 3, 4391, consideration 4, 4290, consideration 8, 4066, consideration 3, and 1827, consideration 6). The breach of a procedural rule is nevertheless a flaw on the basis of which a decision not to promote a staff member may be set aside (see Judgments 4391, consideration 4, 4290, consideration 8, 4066, consideration 3, and 1109, consideration 4).

8. As regards the promotion of Eurocontrol staff members, the Tribunal refers to the following relevant provisions of Rule of Application No. 4 concerning the procedure for promotion provided for in Article 45 of the Staff Regulations governing officials of the Eurocontrol Agency:

“Article 2

The power to award promotions shall be vested in the Director General. He shall consult the members of the Promotion Board [...] before drawing up the final list of officials who will be promoted in the course of the year (hereinafter referred to as ‘promotion list’).

Article 3

The Promotion Board shall comprise one Chairman and five members. The Board shall be competent to examine the proposals for promotions drawn up by the directors or heads of service concerned for all staff governed by the Staff Regulations or by the Conditions of Employment of Contract Staff at EUROCONTROL.

[...]

Article 4

1. Each year, the Director General shall provide Directors and Heads of Service with guidelines regarding the portion of budgetary appropriations allocated to promotions. On this basis, Directors and Heads of Service shall determine the promotion proposals established per grade, type of post and function group to be presented to the Promotion Board.

Beforehand, and with a view to establish the above-mentioned promotion proposals and facilitate the work of the Promotion Board, they shall organise the necessary consultations with the representatives designated by the Staff Committee and take note of their opinion. The Staff Committee representatives shall receive the list of promotion candidates who fulfil the minimum length of service requirements in their grade.

[...] The Directorate in charge of human resources shall centralise and coordinate the proposals made for each directorate or service, following the above-mentioned consultations, and send them as established to the Promotion Board provided for in Article 3 of the present Rule.

2. The proposals for promotion made to the Promotion Board shall include for each official put forward:

[...]

Article 5

In the context of the promotion possibilities as determined in Article 4.1 of the present Rule, the Promotion Board shall be convened to validate the list of promotion candidates drawn up in each function group and grade. To this end, the Promotion Board shall receive the detailed form for each proposal as defined in Article 4.2.

[...]

Following the meeting of the Promotion Board, a list of promotion proposals shall be drawn up in each function group by grade and directorate or service, and sent to the Director General by the Chairman of the Promotion Board.

Promotion lists shall be finalised by the Director General and published as an office notice on the basis of the Promotion Board's proposals [...]"

9. In the light of these provisions, the Tribunal considers that neither the Promotion Board nor the Director General can be charged with committing any breaches because, following the preliminary consultations referred to in Article 4(1) of aforementioned Rule of Application No. 4, the complainant's name no longer appeared on the lists of candidates selected by Eurocontrol's various directorates to be submitted to the Promotion Board for promotion in the 2018 exercise.

It is clear from the submissions that, although the complainant did indeed appear on the list of eligible staff members drawn up by the various heads of service or unit in the Directorate CFI at the very beginning of the procedure, she was nonetheless excluded from the final list drawn up by the Director of that directorate. According to the Organisation, the Director of Directorate CFI, during preliminary consultations with representatives of the Staff Committee pursuant to Article 4(1) of Rule of Application No. 4, decided, after comparing the merits of the eligible staff members, not to include the complainant's name on the list of staff members whom he wished to propose to the Promotion Board for his directorate in the 2018 exercise. The Organisation also explains that the draft proposal for the complainant's promotion from her immediate supervisor was discussed at the working group's preparatory meeting on 11 September 2018, but following its meeting of 2 October 2018 the working group did not ultimately deliver an opinion in favour of a proposal being submitted to the Promotion Board for the complainant's promotion to grade AD11 in the Directorate CFI.

10. The complainant observes in this respect that these various elements were not brought to her attention until the proceedings before the Tribunal, which, in her view, is unacceptable. She further points out that it is apparent from the evidence produced by Eurocontrol that her managers did not really consider the merits of her candidature, that the possibility of her promotion was never in fact examined, in particular on the basis of transparent and non-discriminatory criteria, and that the reasons which, according to the Director General, justified the decision not to include her on the list of candidates proposed to the Promotion Board are inadequate.

11. As regards the requirement to state the reasons for decisions refusing to promote staff members taken in a general annual promotion exercise, the Tribunal stated, in Judgment 2869, consideration 7, by reference to Judgment 1355, consideration 8, that "there is no rule or principle of law that requires the Director-General to state in so many words just why he has turned someone down for promotion or

appointment. What matters is that, if the official asks, the reasons must be revealed. Otherwise the Tribunal may not exercise its power of review and determine whether the reasons are lawful and the decision sound.” In other words, the organisation concerned must be able to provide the reasons for its decision at the request of a staff member who has been passed over.

The Tribunal has similarly considered that mutual trust between the organisation and its staff requires that candidates who are not selected for promotion be informed in good time of the decision and the reasons for it, since the principle of the duty to state the reasons for a decision is an essential condition for proper defence of the official’s rights. The staff member is therefore entitled to be given any information necessary for that purpose (see, in particular, Judgment 1223, consideration 36). This helps to safeguard the right of the staff member concerned to lodge an internal appeal and to file a complaint with the Tribunal if she or he considers that the denial of promotion is unlawful (see, for similar case law concerning non-selection to a post following a competitive procedure, Judgments 4060, consideration 9, 3903, consideration 21, 2124, consideration 4, and 1223, considerations 20 and 36).

This being so, the Tribunal has also stated that the reasoning for a decision to refuse a promotion is adequate when it allows the staff member concerned to understand the reasons why the successful candidate was promoted, even if she or he does not agree with them (see, in particular, Judgment 4625, consideration 10). Similarly, it has considered on various occasions that the duty to state reasons, in particular when the organisation is required to choose between candidates, does not in itself mean that the reasons for the choice must be notified at the same time as the adverse decision; these reasons may be disclosed at a later date (see, for example, Judgments 4455, consideration 11, and 4368, consideration 15), for example in the context of a procedure arising from a challenge to the selection process (see, in particular, Judgments 4683, consideration 12, 4467, consideration 7, 4455, consideration 11, 4368, consideration 15, 4259, consideration 6, 3660, consideration 3, and 2978, consideration 4).

The Tribunal has even held in various judgments that the reasons for a decision impugned before it can be set forth in briefs or submissions produced for the first time before the Tribunal, provided that the complainant's right of appeal is fully respected (see Judgments 4081, consideration 5, 3772, consideration 11, 2927, consideration 7, 2112, consideration 5, 1817, consideration 6, and 1289, consideration 9).

12. In view of the foregoing considerations, the Tribunal finds that the Director General's initial decision of 10 December 2018 which listed the names of the staff members promoted in the 2018 promotion exercise was not flawed merely because it did not state why the complainant had not been included in the list of eligible candidates. The Tribunal also observes that the reasons why the complainant was excluded at the first stage of the procedure in the 2018 promotion exercise were ultimately set out in the Organisation's reply and that the complainant thus had an opportunity to challenge them effectively in her rejoinder.

13. However, the Tribunal notes that the fact that these reasons were not disclosed to the complainant earlier, in particular when she had requested them and, in any event, during the internal appeal procedure, breached her right of appeal. Although the Tribunal considers that, in view of its case law referred to in consideration 7 above, this does not constitute a "serious flaw" such as to render the Director General's decision of 10 December 2018 unlawful, this breach of the complainant's right of appeal caused her moral injury (see, to this effect, Judgment 4700, consideration 6). As a result, the Tribunal will decide to award the complainant compensation for the injury suffered, which will be taken into account in the amount of moral damages awarded to her in consideration 29 below.

14. In her second plea specifically directed against the initial decision to refuse her promotion in the 2018 exercise, the complainant submits that her merits were not examined in accordance with the applicable rules, since the evidence submitted by the Organisation to

the Tribunal does not establish that the proposal for her promotion was validated or at least “looked at”<sup>\*</sup> by her managers during the first stage of the promotion procedure.

However, the Tribunal observes that, although Part 3 of the proposal form, in the version produced by Eurocontrol, does not contain the necessary signatures, the fact remains that this document was submitted by the complainant’s line managers during the procedure in which her candidature for promotion in the 2018 promotion exercise was examined. The reports of the two preparatory meetings of the ad hoc working group held on 11 September and 2 October 2018 clearly show that the complainant’s candidature for a promotion to a higher grade was indeed examined by the working group, even though she was not included in the promotion list that was finally submitted to the Promotion Board.

The flaw identified by the complainant was thus inconsequential and should therefore be regarded as having no effect on the lawfulness of the contested decision.

15. In her third plea, the complainant disputes the adequacy of the reasons for the refusal to promote her of which she was notified, as stated above, in the Organisation’s reply to the Tribunal. She argues that the criteria applied are not “transparent and non-discriminatory”<sup>\*</sup>.

However, the Tribunal notes that the Organisation considered it necessary to promote another staff member for reasons relating to the comparative length of service of the two staff members concerned and the respective budgetary costs of their promotion. These reasons were included among those set out in the guideline drawn up by the Director General for the 2018 promotion exercise pursuant to aforementioned Article 4 of Rule of Application No. 4, in accordance with Article 45 of the Staff Regulations.

The plea must therefore be rejected.

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<sup>\*</sup> Registry’s translation.

*On the decision of 23 October 2018 refusing to consider a post reclassification*

16. The complainant further submits that the refusal to consider a reclassification of her post was also affected by various flaws.

17. First of all, the Tribunal wishes to recall that, unlike a promotion, a reclassification of a post held by a member of an international organisation is bound to affect the organisation's structure and will therefore depend on the way in which work is organised (see, to that effect, in particular, Judgment 1207, consideration 9). It is also firmly established in the case law that both the classification and the reclassification of a post in an international organisation is a matter within the discretion of the executive head of that organisation and that the grounds for reviewing any decision taken are limited (see, in particular, Judgments 4685 (reclassification of a post), considerations 4 and 5, and 4186 (classification of a post), consideration 6). Thus, in Judgment 3589, consideration 4, the Tribunal considered that "ordinarily a classification decision would only be set aside if it was taken without authority, had been made in breach of the rules of form or procedure, was based on an error of fact or law, was made having overlooked an essential fact, was tainted with abuse of authority or if a truly mistaken conclusion had been drawn from the facts (see, for example, Judgments 1647, consideration 7, and 1067, consideration 2). This is because the classification of posts involves the exercise of value judgements as to the nature and extent of the duties and responsibilities of the posts and it is not the Tribunal's role to undertake this process of evaluation (see, for example, Judgment 3294, consideration 8)."

18. In her first plea, the complainant alleges a breach of the concluding provision of Article 5 of Rule of Application No. 35 concerning organisational development in that a request for a post reclassification assessment should, in her view, have been submitted to the Organisational Development Committee ("the OD Committee"), as such an assessment had not taken place during the last three years. In her second plea, she considers that such an assessment was especially

justified as the tasks and responsibilities attached to her post had changed considerably in recent years. In support of her third plea, she alleges discrimination in that her own job had not been examined during the analysis of the structure of her service by the OD Committee, although a colleague's post had been. In support of her fourth plea, which she implicitly bases on a breach of the principle of impartiality, she considers that the Joint Committee for Disputes cannot operate in an impartial manner on account of the fact that it is assisted in its work by a secretary who is a subordinate of the Head of Human Resources and Services. In her fifth plea, she contends that the refusal to promote her resulted from retaliation and was part of the moral harassment to which she had been subjected by various members of the supervisory chain. She refers in this connection to an internal complaint of moral harassment that she lodged on 21 October 2019 and which is the subject of her third complaint to the Tribunal, decided on in Judgment 4961, also delivered in public this day.

19. The Tribunal firstly recalls the following provisions of aforementioned Rule of Application No. 35 as in force at the material time, that is before 1 July 2019, and which are relevant to the consideration of this case:

“Article 5

Updating/creation of job description and evaluations in a specific organisational structure

Reviews of existing job descriptions and evaluations may be requested by the Director General or [...] by the line manager with approval of his Director in the context of an organisational change in this Directorate. They shall be carried out, for example, in the case of reorganisations, new activities or major changes in the role or objectives of an area in the Directorate structure.

If a new job is created, the Directorate where it is situated shall request the establishment of a job description/evaluation based on the relevant requirements and criteria and on the organisational structure of the concerned area.

In both cases described above, reviews and newly-created jobs, and when a job is abolished, the Director General or the Directorate concerned shall present a duly reasoned request for change of the organisational structure leading to the revision or the creation of jobs, with supporting evidence, to the area responsible for Organisational Development. This area shall

examine, in conjunction with the Directorate concerned the Agency Business Planning area for the financial impact assessment, the content of the organisational structure and the related job description and/or job evaluation, to be created or amended. The criteria shown in Article 4 of the present Rule of Application shall be examined and assessed to determine the value of the jobs concerned. As mentioned in Article 2, an OD assessment shall be presented to the OD Committee constituted as set out in Article 6 below. The cases for review shall be presented to the Committee by both the Directorate concerned and a member of the OD area.

If a post becomes vacant, for example due to a staff departure, and if the situation does not necessarily entail an organisational change, the Directorate concerned shall however request to the area responsible for Organisational Development the review of the job description and evaluation based on the relevant requirements and criteria before filling the concerned post. If this area estimated that the situation, based on a sourcing or organisational analysis, could entail organisational change, for example if the vacant post does not need to be filled, then the case is presented to the OD Committee in accordance with the procedure described in the previous paragraph.

The case shall however always be presented to the OD Committee if:

- the concerned job description changes or
- the organisation structure concerned by this job changes or
- the post has not been presented to the OD Committee during the last three years.”

20. It is evident from these provisions that, contrary to what the complainant submits, an assessment of the reclassification of her post by the OD Committee was not automatically required simply because the tasks and responsibilities that she had performed in the same post for several years had somewhat changed. Pursuant to the first paragraph of Article 5 of aforementioned Rule of Application No. 35, such an initiative should come from the line manager of the staff member concerned, be approved by the director of the division and then, pursuant to the third paragraph of Article 5, be assessed by the area responsible for Organisational Development (OD) before a possible review by the OD Committee.

Similarly, the complainant is mistaken in relying on the third indent of the fifth paragraph of aforementioned Article 5 of Rule of Application No. 35 to argue that the reclassification of her post should,

in any event, have been submitted to the OD Committee because it had not been reconsidered by that committee in the previous three years. The Tribunal observes first of all that the provision to which the complainant refers, reading it in isolation from the other paragraphs of Article 5, does not have the meaning she seeks to ascribe to it, as is further confirmed by the English version of the provision, in which it does not form a separate paragraph. In fact, it is only when a post is declared vacant that this provision, in contrast to the previous one, specifies the various situations in which the case must always be presented to the OD Committee. Moreover, interpreting the provision as the complainant does would be tantamount to considering that the Organisation should have presented systematically to the OD Committee all posts that had not been presented for three years, regardless of whether those posts were vacant or affected by an organisational change. Such a broad obligation would be difficult to reconcile with the demands of the Organisation's day-to-day operations. The Tribunal further considers that the present case did not, in any event, involve the last of the situations envisaged in the fifth paragraph of Article 5 of the Rule of Application since, as the complainant herself recognises, a decision had already been taken to reorganise the Directorate CFI, with the result that the first and second paragraphs of Article 5, in conjunction with Article 2 of the same Rule of Application, were applicable. Moreover, as the Organisation submits, the fact that a decision had been taken to conduct an organisational analysis of the directorate to which the complainant belonged did not imply that her post should also be automatically assessed and reclassified.

In view of the evidence in the file, the Tribunal does not see any reason to call into question the Organisation's assertion that the colleague to whom the complainant refers was not promoted following a reclassification of his post on the basis of an opinion of the OD Committee but was appointed Head of Unit at grade AD11 on 1 July 2017 after having taken part in a competition and then was promoted to grade AD12 in the 2017 promotion exercise.

Lastly, and as the Tribunal has already stated on several occasions (see, for example, Judgment 4594, consideration 4), there is nothing in the applicable provisions to prevent the Director General from appointing a subordinate of the Head of Human Resources and Services as the Committee's secretary. Moreover, there is no evidence to suggest that the secretary overstepped his role in the present case, let alone attempted to influence the members of the Committee in the manner dictated by his superiors.

21. In respect of her fifth plea, alleging moral harassment suffered by the complainant in the two procedures concerned in the present case, the Tribunal considers, firstly, that the events giving rise to the present complaint took place well before the lodging by the complainant of the complaint of moral harassment on 21 October 2019, secondly, that the specific events leading to the lodging of that complaint largely occurred later, dating back to mid-July 2019 at the earliest, and, thirdly, that the complaint of moral harassment was not lodged until more than 11 months after the adoption of the Director General's decisions of 23 October and 10 December 2018.

In any event, there is nothing in the file to establish that the complainant also alleged that moral harassment took place in the context of the present case, let alone followed the applicable procedure and exhausted the internal means of redress available to her. The plea is therefore irreceivable from that perspective.

22. In her further submissions of 16 September 2024, the complainant, having become aware of the testimony of a former member of Human Resources and Services taken by the investigators during the investigation into her complaint of harassment of 21 October 2019, points out in her sixth plea that her job had previously been classified as Head of Unit in the AD11-AD12 grade bracket (formerly level 4) following an OD assessment, which therefore justified her request for her job to be re-evaluated "at grade AD12 as from the date on which she took up her duties"\*.

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\* Registry's translation.

However, the Tribunal first notes that, as the Organization submits, this testimony appears to relate to a situation considerably before the complainant's appointment as Head of Agreements and Economic Affairs on 1 July 2014 and that account must indeed be taken of the fact that post classifications do not remain fixed over time but, on the contrary, may change according to responsibilities and organisational needs. It next observes that the minutes of a meeting of the Committee of Management held on 8 September 2010 show that the Committee issued an opinion in favour of classifying the post held by the complainant from 1 July 2014 in the AD8-AD11 grade bracket. Lastly, the Tribunal sees no reason to cast doubt on the Organisation's assertion that the complainant's predecessor in the post was employed as Administrator and Head of Agreements and Partnerships at grade AD9 in the AD8-AD11 grade bracket.

23. It follows that none of the complainant's six pleas are founded.

*On the pleas common to the two initial decisions challenged in the complaint*

24. As regards the lawfulness of the two decisions of the Director General of 23 October and 10 December 2018, the complainant submits that they should be set aside as they are the result of gender discrimination based on abuses of process and suffered over many years, the main consequence of which was a stalled career that was slower than that of her male colleagues, a lack of opportunities, a refusal of promotion and the rejection of her applications to competitions in favour of male candidates on each occasion. The complainant likewise considers that, in the impugned decision of 28 November 2019, the Director General did not adequately justify the refusal both to conduct an investigation and to recognise the existence of gender discrimination. She adds that equal treatment for men and women is not ensured within Eurocontrol in general, that she came up against "the

usual glass ceiling, which in her case is reinforced concrete”<sup>\*</sup> and that her situation as a woman and mother of four children was taken into account unlawfully in her career development. She also notes that, in its reply, the Organisation fails to provide tangible evidence of non-discriminatory treatment on the ground of gender and merely makes general or banal assertions or distorts and misrepresents her position.

However, the Tribunal recalls that an allegation of gender discrimination must, in any event, be based on the production by the person making the allegation of sufficient evidence or indicia that appear to be established in the light of the case file and allow the reality of the alleged gender discrimination to be proved. In respect of the introduction of a policy aimed at achieving parity between men and women in an organisation, the Tribunal has also stated that the bottom line in appointments to senior posts must always remain that the person best qualified should be appointed (see, for example, Judgment 2004, consideration 20), so any promotion wholly or even mainly based on considerations of sex would unquestionably be unlawful (see, for example, Judgment 1355, consideration 9).

However, the evidence produced by the parties shows that the complainant’s various internal applications and the proposal drawn up by her supervisor, Mr St., for her possible promotion in 2018 were in fact examined in accordance with the rules on competitions and promotions at Eurocontrol, even though the complainant was not ultimately appointed or promoted. The evidence also shows that on each occasion Eurocontrol justified the refusal to select the complainant on grounds that, in some cases, were disclosed to her of its own accord or at her request without her challenging them in a timely manner and that, on the only occasion on which these grounds were challenged, including in a complaint to the Tribunal, that complaint was dismissed on the merits in Judgment 4594, delivered in public on 1 February 2023. Whether considered separately or analysed together, the various refusals to promote her, as well as the refusal to consider a request for the reclassification of the complainant’s post, do not establish that she

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<sup>\*</sup> Registry’s translation.

was discriminated against on the basis of gender. Lastly, the Tribunal observes that there is nothing in the file to support a finding that the various types of leave taken by the complainant for family reasons in 2015, 2016 and 2017, which were to be taken into account in the 2018 annual promotion exercise, could have had, albeit implicitly, a negative impact on her performance assessment during that period.

This plea is unfounded.

25. In her second plea, the complainant takes issue with the unacceptably long time taken by Eurocontrol to deal with her internal complaint of 22 January 2019, since over ten months elapsed between its lodging and the Director General's impugned decision of 28 November 2019. She therefore claims compensation of 6,000 euros.

In the present case, the complainant's internal complaint was lodged on 22 January 2019, it was examined by the Joint Committee for Disputes at its meeting on 14 June 2019, the Committee delivered its opinion on 11 September 2019 and the impugned decision was taken on 28 November 2019.

Under the Tribunal's settled case law, in order to give rise to a right to compensation, a failure to meet procedural time limits must be wrongful, in that it must appear unreasonable in the light of the specific circumstances of the case in question (see to that effect, for example, Judgments 3510, consideration 24, or 2116, consideration 11). In this situation, the amount of compensation ordinarily depends on two essential considerations, namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgments 4886, consideration 7, 4178, consideration 15, 4100, consideration 7, or 3160, consideration 17).

In this case, although it is true that the period of just over 10 months that elapsed between the lodging of the internal complaint and the delivery of the final decision of 28 November 2019 exceeds by six months the four-month time limit prescribed in Article 92(2) of the Staff Regulations and thereby constitutes a breach by the Organisation of its own rules, the Tribunal considers that the delay cannot be considered unreasonable in the circumstances of the present case.

Moreover, even though this delay breached the applicable rules, the complainant has not adduced any tangible evidence of injury arising from it. The Tribunal fails to see how the lapse of time appreciably aggravated “the consequences and injuries suffered”<sup>\*</sup> by the complainant or in itself rendered “any redress”<sup>\*</sup> more difficult.

There are therefore no grounds for awarding the complainant compensation under that head.

*On the other claims made in the complaint*

26. The complainant asks the Tribunal to order a re-examination of her merits with a view to a promotion and a re-evaluation of her post, and also to declare that she has suffered from gender discrimination and, accordingly, to order Eurocontrol to take all measures to put an end to it or, alternatively, to open an investigation to establish its existence.

However, since it has been established in considerations 6 to 25 above that the Director General’s decisions of 23 October and 10 December 2018 are not unlawful, there are no grounds for granting these various claims.

27. For the same reason, nor are there any grounds for granting the request that Eurocontrol be ordered to pay 150,000 euros in compensation for the injury resulting from “repeated losses of opportunity for promotion and career advancement”<sup>\*</sup>.

28. The complainant also seeks the award of 150,000 euros in compensation for the moral injury she alleges she has suffered. She bases this claim particularly on her allegation of gender discrimination.

However, since the Tribunal has found in consideration 24 above that this allegation has not been proven, there are, consequently, no grounds for granting this claim.

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<sup>\*</sup> Registry’s translation.

29. However, the Tribunal considers that the heads of moral injury identified in considerations 5 and 13 above will be fairly compensated by ordering the Organisation to pay the complainant in this respect a global amount of 12,000 euros.

30. As the complainant succeeds in part, she is entitled to an award of costs, which the Tribunal sets at 5,000 euros.

#### DECISION

For the above reasons,

1. The decision of the Director General of 28 November 2019 is set aside.
2. Eurocontrol shall pay the complainant moral damages in the amount of 12,000 euros.
3. It shall also pay her 5,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 6 November 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLEMENT GASCON

MIRKA DREGER